

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION**

LACY L. SWEET,)
)
Plaintiff,)
)
v.) **No. 2:11-0122**
) **Judge Sharp**
LIFE CARE,)
)
Defendant.)

ORDER

Magistrate Judge Griffin has issued a Report and Recommendation (“R & R”) (Docket No. 25) in which she recommends that the unopposed Motion to Dismiss (Docket No. 17) filed by Crossville Medical Investors, LLC d/b/a Life Care Center of Crossville be granted in part and denied in part, and that this action be dismissed with prejudice. Despite being specifically informed in the R & R that any objections were to be filed within fourteen days of service, the parties have filed no objections.

Having considered the matter *de novo* and in accordance with Rule 72 of the Federal Rules of Civil Procedure, the Court agrees with Magistrate Judge Griffin that Plaintiff’s conduct in this case warrants dismissal of the action under Fed. R. Civ. P. 37(b) and 41(b) because, even though Defendant twice re-noticed Plaintiff’s deposition to accommodate her schedule, she failed to appear, failed to notify the Court or Defendant prior to the scheduled deposition that she would not attend, and failed to offer any after-the-fact explanation for her failure to appear. The Court also agrees with Magistrate Judge Griffin’s conclusion that an award of expenses to Defendant would be unjust given Plaintiff’s *in forma pauperis* status, and the fact that this action will be dismissed with

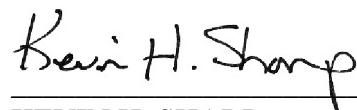
prejudice as a sanction for Plaintiff's failure to attend her deposition.

Accordingly, the Court rules as follows:

- (1) The R & R (Docket No. 25) is hereby ACCEPTED and APPROVED;
- (2) Defendant's Motion to Dismiss (Docket No. 17) is hereby GRANTED to the extent that it seeks dismissal of this action, but DENIED to the extent that it seeks an award of costs; and
- (3) This action is hereby DISMISSED WITH PREJUDICE.

The Clerk is directed to enter Judgment in a separate document in accordance with Federal Rule of Civil Procedure 58.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE